

## *IP Laws Declared by the Supreme Court*

# Trademark Law Declared by the Supreme Court of India in Twentieth-Century

Aqa Raza<sup>1†</sup> and Ghayur Alam<sup>2</sup>

<sup>1</sup>Jindal Global Law School, O.P. Jindal Global University, Sonapat — 131 001, Haryana, India

<sup>2</sup>National Law Institute University, Bhopal — 462 044, Madhya Pradesh, India

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The Parliament of India makes, amends, and unmakes law. The Supreme Court of India (*hereinafter*, the Supreme Court), under Article 141 of the Constitution of India, declares the law and makes and unmakes the law while deciding cases through the process of judicial review and interpretation-construction. The constitutional powers of these two branches are related but separate. The law made by the Parliament stands constitutionally valid unless declared unconstitutional, eviscerated or read down by the Supreme Court. As the analyses reveals,<sup>1</sup> the constitutionality of none of the seven intellectual property (*hereinafter*, IP) enactments has been challenged before the Supreme Court in any of the cases brought before it. Had the constitutionality of these statutes been challenged even then the statutes are presumed to be constitutionally valid and the person who challenges the validity of the statute and any provision thereof has a heavy burden to discharge. The Supreme Court ordinarily interprets-constructs the provisions of the statute and applies the same to decide the question(s) of law and/or question of facts in a *lis* between the parties before it. The answer of the Supreme Court becomes binding not only *in personam* but also *in rem* for the future cases. Among all the IP cases decided by the Supreme Court, trademark law may be called as the King of IP decisions with maximum number of reported decisions followed by copyright, patent and design laws. The first trademark case was decided by the Supreme Court in the year 1953, after 1196 days (3.27 years) of its establishment. In 20<sup>th</sup> century, the Supreme Court has decided a total of 19 cases on trademark law. On an average, the Supreme Court has decided .38 (point three eight) trademark case in a year; or one trademark case in 978.94 (point nine four) days or in 2.68 (point six eight) years. A review of reported decisions of 20<sup>th</sup> century reveals that the Court has: (i) declared Trademark Law in 15 decisions; (ii) not only interpreted the provisions of the statutes but has also constructed them; (iii) not declared anything on the constitutionality of the trademark statutes as no such question of constitutionality was involved; (iv) delivered all the decisions unanimously as no dissenting or concurring judgment is reported; (v) decided maximum number of cases by Full Bench (11) and remaining 8 decisions by Division Bench. It is also observed that two Chief Justices of India and one Acting Chief Justice were on the Bench in three decisions, but the judgment was authored only by the Acting Chief Justice. Paper proceeds with the same argument and method as developed and adopted in the first three papers covering patent law, copyright law and design law published under the theme '*IP Laws Declared by the Supreme Court*'. This Paper seeks to cull out the principles of trademark law as declared by the Supreme Court in 20<sup>th</sup> century decisions.

**Keywords:** Trademark, Supreme Court of India, Law Declared, Article 141, The Constitution of India, The Trade Marks Act, 1940, The Trade and Merchandise Marks Act 1958, The Trade Marks Act, 1999, Bench, Decisions, Dissenting, Concurring, Constructed Meaning, Principles, Interpretation-Construction, Twentieth Century, Unwary Purchaser, Trademark Trafficking, Trademark Infringement, Passing Off Action, Remedy

The Parliament's power of "law-(un)making/amending" and Supreme Court of India's power of "law declaring" are constitutionally distinct and separate. Furtherance to draftsmanship, the Parliament/Legislature amends/legislates which may either result into making or/and unmaking of law. So is the case with Judiciary, which in furtherance to craftsmanship declares law and makes and unmakes law. The "law declared" by the Supreme Court has a constitutionally binding effect and can be declared in several ways by: declaring the statute or its provisions

thereof as constitutional or unconstitutional; or deciding the cases between the parties; or declaring law by answering the question(s) of law or/and question of facts involved in a case; or interpreting the provisions of the statute; or constructing the text of the statute to give it a legal effect. Nonetheless, the *presumption of constitutionality* keeps an enacted law in force even if its validity has not been challenged, or if challenged but not finally decided — where the constitutionality of the statute is challenged, the person challenging the validity has a heavy burden to discharge. This Paper is in continuation to the papers '*Patent Law Declared by the Supreme Court of*

<sup>†</sup>Corresponding author: Email: aqaraza@outlook.com

India',<sup>2</sup> 'Copyright Law Declared by the Supreme Court of India'<sup>3</sup> and 'Design Law Declared by the Supreme Court of India'<sup>4</sup> published in the *Journal of Intellectual Property Rights (JIPR)* under the theme 'IP Laws Declared by the Supreme Court'. In this Paper, an attempt has been made to cull out the principles of trademark law from the reported decisions<sup>5</sup> of the Supreme Court of India (*hereinafter*, the Court) from the date of its establishment *i.e.*, 28 January 1950 till the last decade of twentieth century. The Trade Marks Act, 1999,<sup>6</sup> (*hereinafter*, the Act of 1999) came into effect on 15 September 2003.<sup>7</sup> Before coming into effect of the Act of 1999, the cases relating to trademarks were decided under the provisions of The Trade and Merchandise Marks Act, 1958<sup>8</sup> (*hereinafter*, the Act of 1958). And before the 1958 Act, the cases were decided under the provisions of The Trade Marks Act, 1940<sup>9</sup> (*hereinafter*, the Act of 1940). The Court through interpretation-construction<sup>10</sup> powers has decided only nineteen (19) trademark cases in the twentieth-century which on an average is 0.38 (point three eight) in a year; or one trademark case in 978.94 (point nine four) days or in 2.68 (point six eight) years. These nineteen reported decisions include 8 Division Bench and eleven(11) Full Bench. No Single or Constitution Bench decision is reported from this century. Moreover, all the nineteen decisions are unanimous and no dissenting or concurring opinion is reported. In these nineteen (19) reported decisions, a total of thirty-eight judges were on the bench. Justice J M Shelat was on the bench in two cases and authored both the decisions. In one of the cases, a Full Bench, he was on the Bench as the Acting Chief Justice. Justices N Rajagopala Ayyangar, Mehr Chand Mahajan, Sudhi Ranjan Das, R S Pathak, D P Madon, S C Agarwal, K Ramaswamy, Faizan Uddin, S B Majmudar and G N Ray were on the bench in one case each and they all authored the judgment. Justice P B Gajendragadkar authored one judgment and was on the bench in two cases including one in which he was on the bench as the Chief Justice. Justices S K Das, A K Sarkar, K N Wanchoo, J S Verma, S Saghir Ahmad and G B Pattanaik were on the bench in two cases each and authored only one judgment. Justice J C Shah was on the bench in three(3) cases and did not author any judgment. Justices Amarendra Nath Sen and Dr A S Anand were on the bench in two (2) cases and did not author any judgment. Justices Vivian Bose, B Jagannadhadas, N H Bhagwati, B P Sinha, J L Kapur, Syed Jaffer Imam, M Hidayatullah, C A

Vaidialingam, D G Palekar, S N Dwivedi, P N Bhagwati (as Chief Justice), M N Venkatachaliah, N D Ojha, K Venkataswami, B N Kirpal, S Rajendra Babu, and K T Thomas were on the bench in one (1) case each but did not author the judgment. In total two Chief Justices of India and one Acting Chief Justice of India were on the bench in five (5) trademark cases. But of these five decisions, only the then Acting Chief Justice of India delivered the judgment.

In the five decades of twentieth-century (after the Supreme Court of India came into being), maximum number of trademark decisions were delivered in the last decade (eight decisions) followed by seventh decade (four decisions), sixth decade (three decisions), and eighth and ninth decades together with two decisions each. The first reported decision of the Supreme Court on trademark law is *National Sewing Thread Co Ltd v James Chadwick and Bros Ltd*<sup>11</sup> and the latest decision is *Whirlpool Corporation v Registrar of Trade Marks, Mumbai*.<sup>12</sup>

### **Trademark Law Declared in the Sixth Decade of Twentieth-Century**

The sixth decade of the twentieth century for the Supreme Court of India is its first decade as it came into being on 28 January 1950. In this decade, the Supreme Court delivered only three decisions (one Division Bench and two Full Bench). All the three decisions in this decade were decided and involved the interpretation-construction of the provisions of The Trade Marks Act, 1940.<sup>13</sup>

The first reported decision from this decade is *National Sewing Thread Co Ltd v James Chadwick and Bros Ltd*,<sup>14</sup> in which Justice Mehr Chand Mahajan penned down the judgment on behalf of the Division Bench. This being the first trademark case was decided after 1196 days of establishment of the Supreme Court. The relevant principles of trademark law culled out from the decision are as follows:

- (i) Under...[S]ection (8 of The Trade Marks Act, 1940) an application made to register a trade mark which is likely to deceive or to cause confusion has to be refused notwithstanding the fact that the mark might have no identity or close resemblance with any other trade mark. The Registrar has to come to a conclusion on this point independently of making any comparison of the mark with any other registered trade mark. What the Registrar has to see is whether looking at the circumstances of the case a particular trade mark is likely to deceive or to cause confusion.<sup>15</sup>

- (ii) The burden of proving that the trade mark which a person seeks to register is not likely to deceive or to cause confusion is upon the applicant. It is for him to satisfy the Registrar that his trade mark does not fall within the prohibition of Section 8 and therefore it should be registered. Moreover, in deciding whether a particular trade mark is likely to deceive or cause confusion that duty is not discharged by arriving at the result by merely comparing it with the trade mark which is already registered and whose proprietor is offering opposition to the registration of the mark. The real question to decide in such cases is to see as to how a purchaser, who must be looked upon as an average man of ordinary intelligence, would react to a particular trade mark, what association he would form by looking at the trade mark, and in what respect he would connect the trade mark with the goods which he would be purchasing.<sup>15</sup>
- (iii) If the trade mark conveys the idea...and if an *unwary purchaser* is likely to accept the goods of the appellants as answering the requisition..., then undoubtedly the appellants' trade mark is one which would be likely to deceive or cause confusion.<sup>16</sup>
- (iv) *[T]he onus in a passing off action rests on a plaintiff* to prove whether there is likelihood of the defendant's goods being passed off as the goods of the plaintiffs.<sup>16</sup>

The second case is *Registrar of Trade Marks v Ashok Chandra Rakhit Ltd*,<sup>17</sup> a Full Bench decision. Justice Sudhi Ranjan Das delivered the unanimous decision on behalf of the Court. The Court declared that:

- (i) The registration of a trade mark confers substantial advantages on its proprietor.<sup>18</sup>
- (ii) The real purpose of requiring a disclaimer is to define the rights of the proprietor under the registration so as to minimise, even if it cannot wholly eliminate, the possibility of extravagant and unauthorised claims being made on the score of registration of the trade marks.<sup>18</sup>
- (iii) [W]here a distinctive label is registered as a whole, such registration cannot possibly give any exclusive statutory right to the proprietor of the trade mark to the use of any particular word or name contained therein apart from the mark as a whole.<sup>19</sup>
- (iv) [T]he possibility of the proprietor attempting to expand the operation of his trade mark cannot be

ignored or overlooked. It is a thing which must be taken into consideration by the Tribunal be it the Registrar or the Court — in deciding upon the way it should exercise the discretionary power conferred on it.<sup>20</sup>

The last case from this decade is *Corn Products Refining Co v Shangrila Food Products Ltd*,<sup>21</sup> a Full Bench decision. Justice A K Sarkar delivered the unanimous decision of the Court. The Court declared:

- (i) [W]hat is necessary is that the reputation should attach to the trade mark; it should appear that the public associated that trade mark with certain goods. The reputation with which we are concerned in the present case is the reputation of the trade mark and not that of the maker of the goods bearing that trade mark.<sup>22</sup>
- (ii) A trade mark may acquire a reputation in connection with the goods in respect of which it is used though a buyer may not know who the manufacturer of the goods is.<sup>22</sup>
- (iii) [W]ell recognised principle, that has to be taken into account in considering the possibility of confusion arising between any two trademarks, that, where those two marks contain a common element which is also contained in a number of other marks in use in the same market such a common occurrence in the market tends to cause purchasers to pay more attention to the other features of the respective marks and to distinguish between them by those features. This principle clearly requires that the marks comprising the common element shall be in fairly extensive use and...in use in the market in which the marks under consideration are being or will be used.<sup>23</sup>
- (iv) The series of marks containing the common element or elements therefore only assist the applicant when those marks are in extensive use in the market.<sup>24</sup>
- (v) The onus of proving such user is of course on the applicant, who wants to rely on those marks.<sup>24</sup>
- (vi) [T]he question whether the two marks are likely to give rise to confusion or not is a question of first impression. It is for the court to decide that question. English cases proceeding on the English way of pronouncing an English word by Englishmen, which it may be stated is not always the same, may not be of much assistance in our country in deciding questions of phonetic similarity. It cannot be overlooked that the word

is an English word which to the mass of the Indian people is a foreign word. It is well recognised that in deciding a question of similarity between two marks, the marks have to be considered as a whole.<sup>25</sup>

- (vii) [I]n deciding the question of similarity between the two marks we have to approach it from the point of view of a man of average intelligence and of imperfect recollection. To such a man the overall structural and phonetic similarity and the similarity of the idea in the two marks is reasonably likely to cause a confusion between them.<sup>26</sup>
- (viii) The absolute identity of the two competing marks or their close resemblance is only one of the tests for determining the question of likelihood of deception or confusion. Trade connection between different goods is another such test. *Ex hypothesi*, this latter test applies only when the goods are different. These tests are independent tests. There is no reason why the test of trade connection between different goods should not apply where the competing marks closely resemble each other...Whether by applying these tests in a particular case the conclusion that there is likelihood of deception or confusion should be arrived at would depend on all the facts of the case.<sup>27</sup>

### Trademark Law Declared in the Seventh Decade of Twentieth-Century

In this decade, the Supreme Court delivered four decisions (all Full Bench). Of these four decisions, in two decisions the expressions “trade” and “marks” find a reference but is not a direct decision.<sup>28</sup> The first direct decision on trademark is *Amritdhara Pharmacy v Satya Deo Gupta*.<sup>29</sup> It is a Full Bench decision and Justice S K Das delivered the unanimous decision of the Court. This case was decided under the provisions of The Trade Marks Act, 1940.<sup>30</sup> The relevant principles of trademark law culled out from the decision are as follows:

- (i) [T]he words used in the Sections (8 and 10)...are “likely to deceive or cause confusion”. The Act does not lay down any criteria for determining what is likely to deceive or cause confusion. Therefore, every case must depend on its own particular facts, and the value of authorities lies not so much in the actual decision as in the tests applied for determining what is likely to deceive or cause confusion. On an application to register,

the Registrar or an opponent may object that the trade mark is not registrable by reason of clause (a) of Section 8, or sub-section (1) of Section 10...In such a case the onus is on the applicant to satisfy the Registrar that the trade mark applied for is not likely to deceive or cause confusion.<sup>31</sup>

- (ii) In cases in which the tribunal considers that there is doubt as to whether deception is likely, the application should be refused. A trade mark is likely to deceive or cause confusion by its resemblance to another already on the Register if it is likely to do so in the course of its legitimate use in a market where the two marks are assumed to be in use by traders in that market. In considering the matter, all the circumstances of the case must be considered.<sup>31</sup>
- (iii) For deceptive resemblance two important questions are: (1) who are the persons whom the resemblance must be likely to deceive or confuse, and (2) what rules of comparison are to be adopted in judging whether such resemblance exists. As to confusion, it is perhaps an appropriate description of the state of mind of a customer who, on seeing a mark thinks that it differs from the mark on goods which he has previously bought, but is doubtful whether that impression is not due to imperfect recollection.<sup>31</sup>
- (iv) [T]he question has to be approached from the point of view of a man of average intelligence and imperfect recollection.<sup>32</sup>
- (v) The trade mark is the whole thing-the whole word has to be considered.<sup>33</sup>
- (vi) *As to acquiescence*: If a trader allows another person who is acting in good faith to build up a reputation under a trade name or mark to which he has rights, he may lose his right to complain, and may even be debarred from himself using such name or mark. But even long user by another, if fraudulent, does not affect the plaintiff’s right to a final injunction; on the other hand, prompt warning or action before the defendant has built up any goodwill may materially assist the plaintiff’s case.<sup>34</sup>

The last decision from this decade is *Kaviraj Pandit Durga Dutt Sharma v Navaratna Pharmaceutical Laboratories*,<sup>35</sup> a Full Bench decision. Justice N Rajagopala Ayyangar penned down the unanimous judgment. This case relates to the amendment<sup>36</sup> that inserted Section 82-A in The Trade Marks Act, 1940.

- (i) A construction which would lead to old marks and new marks being placed on the same footing and being subjected to the same tests for registrability cannot, in our opinion, be accepted.<sup>37</sup>
- (ii) While an action for passing off is a Common Law remedy being in substance an action for deceit, that is, a passing off by a person of his own goods as those of another, that is not the gist of an action for infringement. The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of the exclusive right to the use of the trade mark in relation to those goods". The use by the defendant of the trade mark of the plaintiff is not essential in an action for passing off, but is the sine qua non in the case of an action for infringement. No doubt, where the evidence in respect of passing off consists merely of the colourable use of a registered trade mark, the essential features of both the actions might coincide in the sense that what would be a colourable imitation of a trade mark in a passing off action would also be such in an action for infringement of the same trade mark.<sup>38</sup>
- (iii) In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get-up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial; whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff.<sup>38</sup>
- (iv) When once the use by the defendant of the mark which is claimed to infringe the plaintiff's mark is shown to be "in the course of trade", the question whether there has been an infringement is to be decided by comparison of the two marks. Where the two marks are identical no further questions

arise; for then the infringement is made out. When the two marks are not identical, the plaintiff would have to establish that the mark used by the defendant so nearly resembles the plaintiff's registered trade mark as is likely to deceive or cause confusion and in relation to goods in respect of which it is registered...A point has sometimes been raised as to whether the words "or cause confusion" introduce any element which is not already covered by the words "likely to deceive" and it has sometimes been answered by saying that it is merely an extension of the earlier test and does not add very materially to the concept indicated by the earlier words "likely to deceive".<sup>39</sup>

- (v) [A]s the question arises in an action for infringement the onus would be on the plaintiff to establish that the trade mark used by the defendant in the course of trade in the goods in respect of which his mark is registered, is deceptively similar. This has necessarily to be ascertained by a comparison of the two marks — the degree of resemblance which is necessary to exist to cause deception not being capable of definition by laying down objective standards. The persons who would be deceived are, of course, the purchasers of the goods and it is the likelihood of their being deceived that is the subject of consideration. The resemblance may be phonetic, visual or in the basic idea represented by the plaintiff's mark. The purpose of the comparison is for determining whether the essential features of the plaintiff's trade mark are to be found in that used by the defendant. The identification of the essential features of the mark is in essence a question of fact and depends on the judgment of the Court based on the evidence led before it as regards the usage of the trade. It should, however, be borne in mind that the object of the enquiry in ultimate analysis is whether the mark used by the defendant as a whole is deceptively similar to that of the registered mark of the plaintiff.<sup>39</sup>
- (vi) [Q]uestion of deceptive similarity is a question of fact, unless the test employed for determining it suffers from error.<sup>40</sup>

### **Trademark Law Declared in the Eighth Decade of Twentieth-Century**

In this decade, the Supreme Court delivered only two decisions (1 Division Bench and 1 Full Bench).

The first decision from this decade is *National Bell Co v Gupta Industrial Corporation*,<sup>41</sup> a Division Bench decision. The unanimous judgment of the Court was delivered by Justice J M Shelat. The principles of trademark law culled out from the decision are as follows:

- (i) In determining whether a trade mark is distinctive, regard is to be had whether it is inherently distinctive or is inherently capable of distinguishing and by reason of its use or any other circumstances it is in fact adapted to distinguish or is capable of distinguishing the goods.<sup>42</sup>
- (ii) Under Section 31, registration is prima facie evidence of its validity. The object of the Section is obviously to facilitate proof of title by a plaintiff suing for infringement of his trade mark. He has only to produce the certificate of registration of his trade mark and that would be prima facie evidence of his title. Such registration is prima facie evidence also in rectification applications under Section 56, which means that the onus of proof is on the person making such application. Being prima facie evidence, the evidence afforded by the registration may be rebutted, but in view of Section 32 that can be done if seven years have not elapsed since the original registration. Even where such rebuttal is possible, *i.e.*, where seven years have not elapsed, and it is shown that the mark in question was not registerable under Section 9 as no evidence of distinctiveness was submitted to the Registrar, the registration would not be invalid if it is proved that the trade mark had been so used by the registered proprietor or his predecessor-in-interest as to have become distinctive at the date of registration.<sup>42</sup>
- (iii) If a mark at the time of registration was such that it was likely to deceive or cause confusion or its use would be contrary to any law or contained or consisted of scandalous or obscene matters or matter likely to hurt religious susceptibilities or which would otherwise be disentitled to protection of a court, and therefore, was under Section 11 prohibited from being registered, clause (b) would apply, and the rule as to conclusiveness of the validity of the registration cannot be invoked. That would also be so, if the trade mark at the date of the rectification proceedings was such as to offend against the provisions of Section 11.<sup>43</sup>
- (iv) The expression “aggrieved person” [sub-section (2) of Section 56] has received liberal construction from the courts and includes a person who has, before registration, used the trade mark in question as also a person against whom an infringement action is taken or threatened by the registered proprietor of such a trade mark.<sup>43</sup>
- (v) The words “without sufficient cause” in the Section have clearly relation to the time of the original registration. Therefore, a person can apply for cancellation on the ground that the trade mark in question was not at the date of the commencement of the proceedings distinctive in the sense of Section 9(3). The burden of proof, however, in such a case is, as aforesaid, on the applicant applying under Section 56.<sup>43</sup>
- (vi) The true construction of clause (e) [of Section 11] is that even assuming that the trade marks in question were not distinctive and for that reason not registerable as not falling within Section 9, that fact by itself would not mean that they became disentitled to the protection in a court. That being the true import of Section 11(e), the rule as to conclusiveness of the validity of registration embodied in Section 32 applies even to those cases where if full facts had been ascertained at the time of the registration that registration would not have been allowed provided of course that it does not offend against the provisions of Section 11, *i.e.*, by there being a likelihood of deception or confusion or its bring contrary to any law or containing obscene matter etc. or which would otherwise, *i.e.*, in addition to the matters in clauses (a) to (d) in Section 11 be disentitled to protection in a court. Consequently, the appellant companies cannot bring their case for cancellation of the trade marks in question under clause (b) of Section 32.<sup>44</sup>
- (vii) The distinctiveness of the trade mark in relation to the goods of a registered proprietor of such a trade mark may be lost in a variety of ways, *e.g.*, by the goods not being capable of being distinguished as the goods of such a proprietor or by extensive piracy so that the marks become *publici juris*.<sup>44</sup>
- (viii) The principle underlying clause (c) of Section 32 is that the property in a trade mark exists so long as it continues to be distinctive of the goods

of the registered proprietor in the eyes of the public or a section of the public. If the proprietor is not in a position to use the mark to distinguish his goods from those of others or has abandoned it or the mark has become so common in the market that it has ceased to connect him with his goods, there would hardly be any justification in retaining it on the register.<sup>44</sup>

- (ix) Mere neglect to proceed does not necessarily constitute abandonment if it is in respect of infringements which are not sufficient to affect the distinctiveness of the mark even if the proprietor is aware of them. Where neglect to challenge infringements is alleged, the character and extent of the trade of the infringers and their position have to be reckoned in considering whether the registered proprietor is barred by such neglect.<sup>45</sup>

The last decision from this decade is *Sumat Prasad Jain v Sheoanam Prasad*,<sup>46</sup> a Full Bench decision. Acting Chief Justice J M Shelat delivered the unanimous judgment of the Court. The principles culled out from the judgment are:

- (i) A trade mark means a mark used in relation to good for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right as proprietor to use that mark. The function of a trade mark is to give an indication to the purchaser or a possible purchaser as to the manufacture or quality of the goods, to give an indication to his eye of the trade source from which the goods come, or the trade hands through which they pass on their way to the market.<sup>47</sup>
- (ii) [T]he distinction between a trade mark and a property mark is that whereas the former denotes the manufacture or quality of the goods to which it is attached, the latter denotes the ownership in them. In other words, a trade mark concerns the goods themselves, while a property mark concerns the proprietor. A property mark attached to the movable property of a person remains even if part of such property goes out of his hands and ceases to be his.<sup>47</sup>

### Trademark Law Declared in the Ninth Decade of Twentieth-Century

In this decade, the Supreme Court delivered only 2 decisions (1 Division Bench and 1 Full Bench), of which one case<sup>48</sup> was decided under the provisions of

The Central Excises and Salt Act, 1944, but the expressions “trade” and “marks” find place in the text of the judgment.<sup>49</sup> The only reported direct decision is *American Home Products Corporation v Mac Laboratories Pvt Ltd*,<sup>50</sup> a Division Bench decision. Justice D P Madon penned down the judgment of the Court. The principles of trademark law culled out from the judgment are:

- (i) It is...not necessary for the purpose of registering a trade mark that those goods should be in existence at the date of the application for registration.<sup>51</sup>
- (ii) The object underlying Section 46 (1) is to prevent trafficking in trade marks. This is, in fact, the object underlying all trade mark laws. A trade mark is meant to distinguish the goods made by one person from those made by another. A trade mark, therefore, cannot exist in vacuo. It can only exist in connection with the goods in relation to which it is used or intended to be used.<sup>52</sup>
- (iii) Its [trade mark] object is to indicate a connection in the course of trade between the goods and some person having the right to use the mark either with or without any indication of the identity of that person.<sup>52</sup>
- (iv) Registration of his trade mark gives him the exclusive right to the use of the trade mark in connection with the goods in respect of which it is registered and if there is any invasion of this right by any other person using a mark which is the same or deceptively similar to his trade mark, he can protect his trade mark by an action for infringement in which he can obtain injunction, damages or an account of profits made by the other person. In such an action, the registration of a trade mark is *prima facie* evidence of its validity.<sup>52</sup>
- (v) The proprietor of an unregistered trade mark whose mark is unauthorisedly used by another cannot, however, sue for the infringement of such trade mark. His only remedy lies in bringing a passing-off action, an inconvenient remedy as compared to an infringement action.<sup>53</sup>
- (vi) In a passing-off action the plaintiff will have to prove that his mark has by user acquired such reputation as to become distinctive of the plaintiff's goods so that if it is used in relation to any goods of the kind dealt with by the plaintiff, it will be understood by the trade and public as

meaning that the goods are the plaintiff's goods.<sup>53</sup>

- (vii) In an infringement action, the plaintiff is not required to prove the reputation of his mark.<sup>53</sup>
- (viii) As the registration of a trade mark confers such valuable rights upon the registered proprietor thereof, a person cannot be permitted to register a trade mark when he has not used it in relation to the goods in respect of which it is sought to be registered or does not intend to use it in relation to such goods.<sup>54</sup>
- (ix) To get a trade mark registered without any intention to use it in relation to any Goods but merely to make money out of it by selling to others the right to use it would be trafficking in that trade mark.<sup>54</sup>
- (x) The intention to use a trade mark sought to be registered must be, therefore, genuine and real.<sup>55</sup>
- (xi) The intention to use the mark must exist at the date of the application for registration and such intention must be genuine and bona fide.<sup>55</sup>
- (xii) [T]o enable the proprietor of a trade mark who has got it registered on the ground that he intends to use the trade mark to avail himself of the fiction created by Section 48(2), he must have had in mind at the date of his application for registration some person to whom he intends to allow the use of the trade mark as a registered user. This would eliminate all chances of trafficking in a trade mark.<sup>56</sup>
- (xiii) If an applicant for registration did not have at the date of his application for registration a particular registered user in view, he cannot be said to have had a bona fide intention to use the trade mark and in such an event he cannot resist an application made under clause (a) of Section 46(1) of the 1958 Act.<sup>56</sup>

### Trademark Law Declared in the Last Decade of Twentieth-Century

In this decade, the Supreme Court delivered only 8 decisions (5 Division Bench and 3 Full Bench). The first reported decision is a Full Bench unanimous order in *Wander Ltd v Antox India*.<sup>57</sup> The Court laid down certain principles as to interlocutory injunction in trademark cases:

- (i) [T]he prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the

trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "*balance of convenience lies*".<sup>58</sup>

- (ii) The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a *prima facie*. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.<sup>59</sup>
- (iii) [T]he Appellate Court (in appeals) will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.<sup>60</sup>
- (iv) An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court



reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.<sup>60</sup>

- (v) An infringement action is available where there is violation of specific property-right acquired under and recognised by the statute.<sup>61</sup> In a passing-off action, however, the plaintiff's right is independent of such a statutory right to a trade mark and is against the conduct of the defendant which leads to or is intended or calculated to lead to deception.<sup>61</sup>
- (vi) Passing-off is said to be a species of unfair trade competition or of actionable unfair trading by which one person, through deception, attempts to obtain an economic benefit of the reputation which another has established for himself in a particular trade or business. The action is regarded as an action for deceit.<sup>61</sup>
- (vii) The tort of passing-off involves a misrepresentation made by a trader to his prospective customers calculated to injure, as a reasonably foreseeable consequence, the business or goodwill of another which actually or probably, causes damage to the business or goodwill of the other trader.<sup>61</sup>

*Gujarat Bottling Company Ltd v Coca Cola Co*<sup>62</sup> is a Full Bench decision and the unanimous judgment of the Court was delivered by Justice S C Agrawal. The principles culled out from the judgment are as follows:

- (i) For being capable of being the subject-matter of property a trade mark had to be distinctive.<sup>63</sup>
- (ii) The registration as registered user enables the use of the trade mark by the registered user as being treated as use by the proprietor of the trade mark and enables a registered user to take proceedings in his own name to prevent infringement of the trade mark.<sup>64</sup>
- (iii) [L]icensing of trade mark is governed by common law and is permissible provided (i) the licensing does not result in causing confusion or deception among the public; (ii) it does not destroy the distinctiveness of the trade mark, that is to say, the trade mark, before the public eye, continues to distinguish the goods connected with others; and (iii) a connection in the course of trade consistent with the definition of trade mark continues to exist between the goods and the proprietor of the mark.<sup>64</sup>

- (iv) Under the common law in England a man is entitled to exercise any lawful trade or calling as and where he wills. The law has always regarded jealously any interference with trade, even at the risk of interference with freedom of contract, as it is public policy to oppose all restraints upon liberty of individual action which are injurious to the interests of the State. A person may be restrained from carrying in his trade by reason of an agreement voluntarily entered into by him with that object and in such a case the general principle of freedom of trade must be applied with due regard to the principles that public policy requires for persons of full age and understanding the utmost freedom to contract.<sup>65</sup>
- (v) Contracts in restraint of trade are prima facie void and the onus of proof is on the party supporting the contract to show that the restraint goes no further than is reasonably necessary to protect the interest of the covenantee and if this onus is discharged the onus of showing that the restraint is nevertheless injurious to the public is on the party attacking the contract.<sup>66</sup>
- (vi) Under Order 39 of The Code of Civil Procedure, [1908]<sup>67</sup> jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame.<sup>68</sup>

*Cycle Corporation of India Ltd v T I Raleigh Industries Pvt Ltd*,<sup>69</sup> is a Full Bench decision of the Supreme Court. The unanimous judgment of the Court was delivered by Justice K Ramaswamy. The Court declared:

- (i) There is no specific bar for an unregistered licensee to use registered trade mark so long as there is a connection in the course of trade between the licensor and the licensee.<sup>70</sup>
- (ii) The expression "by any registered proprietors" in Section 46(1)(b) should not be restricted to user by proprietor or registered user who should also include bona fide or authorised users. The legislature did not intend to register proprietor to be deprived of their property at the instance of user whose use is unregistered. The expression, therefore, should not be restricted to user by the proprietor himself or any registered user

but should also take into account bona fide authorised user.<sup>70</sup>

- (iii) An un-registered person under Section 48(1) or a person who did not register under Section (1) of Section 48 shall not be deemed to be a registered user for the purpose of Section 46 or any other law.<sup>71</sup>
- (iv) [E]ven an unregistered licensee, so long as there is unbroken connection in the course of the trade between the licensor and the passing off licensee's goods under the trade mark, there would be sufficient connection in the course of the trade between the proprietor and bona fide user of the trade mark by unregistered user. It must, therefore, be held that though the deemed presumption under sub-section (2) of Section 48 is referable to the permitted user or the registered user and it does not extend to unregistered permitted user, the Connecting link of passing off the goods between the licensor's trade mark and the licensee should bona fide be with the permission or Consent which may be express or implied by long course of dealings. It would connect the registered proprietor and the user of the trade mark by the unregistered licensee.<sup>72</sup>
- (v) It must be shown that the non-use of the trade mark is due to special circumstances of the trade and not due to some other Cause which would have operated, whether the special Circumstances had arisen or not. Although the special circumstances of trade taken by themselves would have prevented the use of the trade mark.<sup>72</sup>
- (vi) It must, therefore, be duty of the registered proprietor to show what non-user was strictly due to the special circumstances of trade and not of any intention on the part of the registered proprietor not to use the trade mark during the relevant period.<sup>73</sup>

*N R Dongre v Whirlpool Corporation*<sup>74</sup> is a Division Bench decision of the Supreme Court. The unanimous judgment on behalf of the Court was penned down by Justice J S Verma. The Court declared:

- (i) Injunction is a relief in equity and is based on equitable principles.<sup>75</sup>
- (ii) [A] mark in the form of a word which is not a derivative of the product, points to the source of the product.<sup>75</sup>

*Bengal Waterproof Limited v Bengal Waterproof Manufacturing Company*<sup>76</sup> is a Division Bench

decision. The judgment of the Court was penned down by Justice S B Majumdar. The Court declared:

- (i) [I]nfringement of a registered trade mark carried on from time to time would give a recurring cause of action to the holder of the trade mark to make a grievance about the same and similarly such impugned passing off actions also would give a recurring cause of action to the plaintiff to make a grievance about the same and to seek appropriate relief from the court.<sup>77</sup>
- (ii) It is now well settled that an action for passing off is a common law remedy being an action in substance of deceit under the Law of Torts. Wherever and whenever fresh deceitful act is committed the person deceived would naturally have a fresh cause of action in his favour. Thus, every time when a person passes off his goods as those of another he commits the act of such deceit. Similarly, whenever and wherever a person commits breach of a registered trade mark of another he commits a recurring act of breach of infringement of such trade mark giving a recurring and fresh cause of action at each time of such infringement to the party aggrieved.<sup>78</sup>
- (iii) In cases of continuous causes of action or recurring causes of action bar of Order 2 Rule 2 sub-rule (3) cannot be invoked. In this connection it is profitable to have a look at Section 22 of the Limitation Act, 1963. It lays down that 'in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues'. As act of passing off is an act of deceit and tort every time when such tortious act or deceit is committed by the defendant the plaintiff gets a fresh cause of action to come to the court by appropriate proceedings. Similarly, infringement of a registered trade mark would also be a continuing wrong so long as infringement continues.<sup>78</sup>
- (iv) [W]hether the earlier infringement has continued or a new infringement has taken place cause of action for filing a fresh suit would obviously arise in favour of the plaintiff who is aggrieved by such fresh infringements of trade mark or fresh passing off actions alleged against the defendant.<sup>78</sup>

*Vishnudas Trading v Vazir Sultan Tobaccoco Ltd*,<sup>79</sup> is a Division Bench decision of the Supreme Court. The unanimous judgment of the Court was delivered by Justice G B Pattanaik. The Court declared the following principles of trademark law:

- (i) [I]f a trader or manufacturer actually trades in or manufactures only one or some of the articles coming under a broad classification and such trader or manufacturer has no bonafide intention to trade in or manufacture other goods or articles which also fall under the said broad classification, such trader or manufacturer should not be permitted to enjoy monopoly in respect of all the articles which may come under such broad classification and by that process preclude the other traders or manufacturers to get registration of separate and distinct goods which may also be grouped under the broad classification.<sup>80</sup>
- (ii) [U]nder sub-section (3) of Section 12 of the Trade Marks Act, in an appropriate case of honest concurrent use and/or of other special circumstances, same and deceptively similar trade marks may be permitted to another by the Registrar, subject to such conditions as may deem just and proper to the Registrar.<sup>81</sup>
- (iii) The “class” mentioned in the Fourth Schedule may subsume or comprise a number of goods or articles which are separately identifiable and vendible and which are not goods of the same description as commonly understood in trade or in common parlance.<sup>81</sup>

*Manmohan Garg v Radha Krishna Narayan Das*,<sup>82</sup> is a Full Bench unanimous order of the Court. The Court did not declare the principles of trademark law and decided the case on facts.

The last trademark decision of the last decade and of this century is *Whirlpool Corporation v Registrar of Trade Marks, Mumbai*,<sup>83</sup> a Division Bench decision. The unanimous judgment of the Court was delivered by Justice S Saghir Ahmad. The question before the Court in this case involved the interpretation of the expression “Tribunal” which includes the “High Court” and the “Registrar”. The Court answered the question:

‘[I]f the proceeding is pending before the “Registrar”, it becomes the “Tribunal”. Similarly, if the proceeding is pending before the “High Court”, then the High Court has to be treated as “Tribunal”. Thus, the jurisdiction of the Registrar and the High Court, though apparently concurrent in certain matters, is mutually exclusive...[I]f a particular proceeding is pending before the registrar, any other proceeding, which may, in any way, relate to the pending proceeding, will have to be initiated before and taken up by the Registrar and the High Court will act as the Appellate Authority of the Registrar

under Section 109. It is obvious that if the proceedings are pending before the High Court, the registrar will keep his hands off and not touch those or any other proceedings which may, in any way, relate to those proceedings, as the High Court, which has to be the High Court having jurisdiction as set out in Section 3, besides being the Appellate Authority of the Registrar has primacy over the Registrar in all matters under the Act.’<sup>84</sup>

As to the question of cancelling of the Certificate of Registration/Renewal by the Registrar, the Court declared:

‘[I]n view of Section 107 of the Act, the Registrar could not legally issue any *suo motu* notice to the appellant under Section 56(4) of the Act for cancellation of the Certificate of Registration/Renewal already granted.’<sup>85</sup>

### Conclusion

The Supreme Court of India in 15 reported decisions has declared the principles of Trademark Law and has iron out the creases by providing a clear picture of law. Moreover, the inherent ambiguities in the provisions of the statute and particularly the definitional difficulties were also resolved by the Court by declaring a clear law on the point through its method of interpretation-construction. The decisions of the court not only bring an end to *lis* between the parties but lay down a clear path to be followed in future cases. As all the reported decisions were unanimous so no dissenting or concurring judgment is reported. Had there been some dissenting or concurring judgments, different reasons and basis to those reasons would have been expected. Nevertheless, the court through ratiocination has answered the questions of trademark law. Perhaps this century has witnessed legislative transformations, deciding cases under the Act of 1940, and later under the Act of 1958. But the chain of this legislative draftsmanship will not break with the end of this century, rather this century with its end gave birth to a new legislation *i.e.*, The Trade Marks Act, 1999 which was enacted on 30 December 1999 and came into force after 1,354 days on 15 September 2003.<sup>86</sup> The first decision on the Act of 1999 was reported in 2004. Until 2003, all the trademark cases were decided under the provisions of either Act of 1940 or Act of 1958.

From the principles of trademark law culled out from the reported decisions, it seems that the *raison d’etre* of trademark law is the protection of interest of *unwary purchaser* from confusion or deception and

protection of the rights of the trademark owner. Moreover, the two protections are also the “two ends” of the trademark law as explicit from the law declared by the Supreme Court.<sup>1</sup> The Court while declaring trademark law has also recognized and emphasized upon the *welfare of consumers*. From the approach of the Court in cases dealing with trademark law and declaring the principles of trademark law, it seems that the trademark monopoly is not only tolerated but is also encouraged for maximizing the happiness of the *unwary customer* and minimizing his pains.<sup>1</sup>

## References

- 1 Raza A, Theoretical Underpinnings of Copyright and Design Laws: Decisions of the Supreme Court of India, *Journal of Intellectual Property Rights*, 26 (4) (2021) 220–234; Raza A, Theoretical Underpinnings of Patent Law: Decisions of the Supreme Court of India, *Journal of Intellectual Property Rights*, 27 (4) (2022) 285–289; Raza A and Alam G, Theoretical Underpinnings of Trademark Law: Decisions of the Supreme Court of India, *Journal of Intellectual Property Rights*, 27 (5) (2022) 351–366; Raza A and Alam G, Theoretical Underpinnings of Copyright and Design Laws Post-KrishikaLulla and Godrej Sara Lee: Decisions of the Supreme Court of India, *Journal of Intellectual Property Rights*, 27 (6) (2022) 434–441.
- 2 Raza A and Alam G, Patent Law Declared by the Supreme Court of India, *Journal of Intellectual Property Rights*, 28 (1) (2023) 46–67.
- 3 Raza A, Alam G and Talib M A, Copyright Law Declared by the Supreme Court of India, *Journal of Intellectual Property Rights*, 28 (2) (2023) 151–170.
- 4 Raza A and Alam G, Design Law Declared by the Supreme Court of India, *Journal of Intellectual Property Rights*, 28 (3) (2023) 236–241.
- 5 The decisions on trademark law have been taken from the Judgment Information System of the Supreme Court (JUDIS), <https://main.sci.gov.in/judgments> (accessed 1 August 2022). For the purposes of citations: Supreme Court Reports (SCR), TruePrint copies from Supreme Court Cases (SCC), SCC OnLine, Supreme Court Almanac (SCALE) and All India Reporter (AIR) have been referred and relied upon. Where, the judgment is not available on the above-mentioned judgment reporters, reliance has been placed on the judgment copy as available on JUDIS.
- 6 Act 47 of 1999.
- 7 *Vide* notification No. S.O. 1048(E), dated 15 September 2003. Gazette of India, *Extraordinary*, Part II, Section 3(ii).
- 8 Act 43 of 1958.
- 9 Act 5 of 1940.
- 10 The expression ‘interpretation-construction’ has been used in the same sense as explained by Lawrence B Solum. Solum L B, The Interpretation-Construction Distinction, *Constitutional Commentary*, 27 (2010) 95–218.
- 11 Judgment dated 7 May 1953, Civil Appeal No. 135 of 1952. Judgment Information System (JUDIS) of the Supreme Court, <https://main.sci.gov.in/judgment/judis/1030.pdf>; accessed 11 February 2023.
- 12 (1998) 8 SCC 1.
- 13 Act 5 of 1940.
- 14 Judgment dated 7 May 1953, Civil Appeal No. 135 of 1952. Judgment Information System (JUDIS) of the Supreme Court, <https://main.sci.gov.in/judgment/judis/1030.pdf>; accessed 11 February 2023.
- 15 Judgment dated 7 May 1953, Civil Appeal No. 135 of 1952. Judgment Information System (JUDIS) of the Supreme Court, <https://main.sci.gov.in/judgment/judis/1030.pdf>; accessed 11 February 2023; 12.
- 16 Judgment dated 7 May 1953, Civil Appeal No. 135 of 1952. Judgment Information System (JUDIS) of the Supreme Court, <https://main.sci.gov.in/judgment/judis/1030.pdf>; accessed 11 February 2023; p. 13.
- 17 SCC Online. Civil Appeal No. 116 of 1953 decided on 15 April 1955.
- 18 SCC Online. Civil Appeal No. 116 of 1953 decided on 15 April 1955, para 8.
- 19 SCC Online. Civil Appeal No. 116 of 1953 decided on 15 April 1955, para 14.
- 20 SCC Online. Civil Appeal No. 116 of 1953 decided on 15 April 1955, para 15.
- 21 SCC Online. Civil Appeal No. 319 of 1955 decided on 8 October 1959.
- 22 SCC Online. Civil Appeal No. 319 of 1955 decided on 8 October 1959, para 11.
- 23 SCC Online. Civil Appeal No. 319 of 1955 decided on 8 October 1959, para 15.
- 24 SCC Online. Civil Appeal No. 319 of 1955 decided on 8 October 1959, para 16.
- 25 SCC Online. Civil Appeal No. 319 of 1955 decided on 8 October 1959, para 18.
- 26 SCC Online. Civil Appeal No. 319 of 1955 decided on 8 October 1959, para 19.
- 27 SCC Online. Civil Appeal No. 319 of 1955 decided on 8 October 1959, para 21.
- 28 *State of Uttar Pradesh v Hafiz Mohammad Ismail*, [1960] 2 SCR 911 (Full Bench decision and Justice K N Wanchoo delivered the unanimous judgment of the Court.); and *Management of Hamdard Dawakhana Wakf Delhi v Workmen*, JUDIS, Civil Appeal No. 199 of 1962 decided on 15 October 1962 (Full Bench decision and Justice P. B. Gajendragadkar delivered the unanimous judgment of the Court).
- 29 SCC Online. Civil Appeal No. 22 of 1960 decided on 27 April 1962.
- 30 Act 5 of 1940.
- 31 SCC Online. Civil Appeal No. 22 of 1960 decided on 27 April 1962, para 6.
- 32 SCC Online. Civil Appeal No. 22 of 1960 decided on 27 April 1962, para 7.
- 33 SCC Online. Civil Appeal No. 22 of 1960 decided on 27 April 1962, para 8.
- 34 SCC Online. Civil Appeal No. 22 of 1960 decided on 27 April 1962, para 13.
- 35 SCC Online. Civil Appeals Nos. 522 and 523 of 1962 decided on 20 October 1964.
- 36 The Trade Marks (Amendment) Act, 1946 (Act 12 of 1946).
- 37 SCC Online. Civil Appeals Nos. 522 and 523 of 1962 decided on 20 October 1964, para 21.
- 38 SCC Online. Civil Appeals Nos. 522 and 523 of 1962 decided on 20 October 1964, para 28.
- 39 SCC Online. Civil Appeals Nos. 522 and 523 of 1962 decided on 20 October 1964, para 29.

- 40 SCC Online. Civil Appeals Nos. 522 and 523 of 1962 decided on 20 October 1964, para 31.
- 41 (1970) 3 SCC 665.
- 42 (1970) 3 SCC 665, 670.
- 43 (1970) 3 SCC 665, 671.
- 44 (1970) 3 SCC 665, 675.
- 45 (1970) 3 SCC 665, 676.
- 46 (1973) 1 SCC 56.
- 47 (1973) 1 SCC 56, 59.
- 48 *Joint Secretary to the Government of India v Messrs Food Specialities Ltd*, (1985) 4 SCC 516. Full Bench decision. Judgment of the Court was delivered by Justice R S Pathak.
- 49 Act 1 of 1944.
- 50 (1986) 1 SCC 465.
- 51 (1986) 1 SCC 465, 491.
- 52 (1986) 1 SCC 465, 492.
- 53 (1986) 1 SCC 465, 492–493.
- 54 (1986) 1 SCC 465, 493.
- 55 (1986) 1 SCC 465, 494.
- 56 (1986) 1 SCC 465, 510.
- 57 1990 (Supp) SCC 727.
- 58 1990 (Supp) SCC 727, 731–732.
- 59 1990 (Supp) SCC 727, 732.
- 60 1990 (Supp) SCC 727, 733.
- 61 1990 (Supp) SCC 727, 734.
- 62 (1995) 5 SCC 545.
- 63 (1995) 5 SCC 545, 555.
- 64 (1995) 5 SCC 545, 557.
- 65 (1995) 5 SCC 545, 564–565.
- 66 (1995) 5 SCC 545, 565.
- 67 Act 5 of 1908.
- 68 (1995) 5 SCC 545, 576.
- 69 (1996) 9 SCC 430.
- 70 (1996) 9 SCC 433.
- 71 (1996) 9 SCC 436.
- 72 (1996) 9 SCC 437.
- 73 (1996) 9 SCC 437–438.
- 74 (1996) 5 SCC 714.
- 75 (1996) 5 SCC 714, 727.
- 76 (1997) 1 SCC 99.
- 77 (1997) 1 SCC 99, 109–110.
- 78 (1997) 1 SCC 99, 110.
- 79 (1997) 4 SCC 201.
- 80 (1997) 4 SCC 201, 223–224.
- 81 (1997) 4 SCC 201, 224.
- 82 (1998) 3 SCC 244.
- 83 (1998) 8 SCC 1.
- 84 (1998) 8 SCC 1, 22.
- 85 (1998) 8 SCC 1, 26.
- 86 *Vide* Notification No. S.O. 1048(E), dated 15th September, 2003, Gazette of India, *Extraordinary*, Part II, Section 3(ii).